UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA ex rel. HAROLD SALOMON, Plaintiff, v. DERISH M. WOLFF 181 Washington Avenue, No. 16B Miami Beach, FL 33139 160 Jockey Hollow Road Bernardsville, NJ 07924 and SALVATORE J. PEPE 51 Fulling Avenue Tuckahoe, NY 10707, Defendants.	)	Civ. No. RWT-06-1970 **COMPLAINT IN INTERVENTION OF THE UNITED STATES OF AMERICA FOR VIOLATIONS OF THE FALSE CLAIMS ACT** **(31 U.S.C. §§ 3729(a)(1)–(3)**, **(a)(7) (as amended October 27, 1986); 31 U.S.C. § 3729(a)(1)(B) (as amended May 20, 2009))**

COMPLAINT IN INTERVENTION OF THE UNITED STATES OF AMERICA AND DEMAND FOR JURY TRIAL

Plaintiff, the United States of America (**United States** or **Government**), brings this civil action against defendants Derish M. Wolff and Salvatore J. Pepe (**Defendants**) to recover monetary damages and civil penalties arising from false claims, statements, and records that Defendants knowingly submitted or caused to be submitted to agencies of the United States in violation of the False Claims Act, 31 U.S.C. §§ 3729–3733 (**FCA**).

1. Defendants were stockholders of Berger Group Holdings, Inc. (**BG Holdings**), and senior executives of BG Holdings' international operating subsidiary, the Louis Berger Group, Inc., formerly known as the Louis Berger Group International, Inc. (**LBG**). LBG is a professional services corporation that contracts with

Government agencies to perform construction, engineering, and environmental projects around the world. Since September 11, 2001, the United States has contracted with LBG to perform major reconstruction work in Afghanistan and Iraq, among other countries. Between at least July 1, 2000 and June 30, 2006,[1] Defendants defrauded the United States of tens of millions of dollars in connection with such contracts.

2. Specifically, Defendants designed and directed numerous accounting schemes to inflate the amount of indirect costs that LBG claimed, and was paid, under Government contacts. Indirect costs are those incurred by LBG in support of its overall business, as opposed to individual contracts, and include salaries of corporate headquarters employees, office building rent, telephone bills, and office supplies.

3. Defendants falsified cost accounting data and "indirect cost rates" used in indirect cost billing—also known as "overhead-recovery rates" or simply "overhead rates"—by conspiring, *inter alia*: (a) to shift indirect costs from contracts paid for by private entities and foreign and state governments to contracts paid for by the United States, and (b) to manipulate other costs included in the equation used to calculate overhead rates for Government contracts. Defendants certified the false cost accounting data and overhead rates and submitted them to Government agencies including the United States Agency for International Development (**USAID**), the United States Army (**Army**), the United States Air Force (**Air Force**), and the Defense Contract Audit Agency (**DCAA**), in annual financial statements called Incurred Cost Submissions, and

[1] This period corresponds with the period between LBG Fiscal Year (**FY**) 2001, which began July 1, 2000 and ended June 30, 2001, and FY 2006, which began July 1, 2005 and ended June 30, 2006.

in periodic proposals to establish provisional overhead rates (**Billing Rates**) for Government contracts.

4. Defendants understood that the false Incurred Cost Submissions and Billing Rate proposals were material to the Government's payment of LBG's invoices and vouchers under USAID, Army, and Air Force contracts, and to LBG's retention of those payments. These false statements induced the United States to enter into: (a) periodic agreements that established inflated Billing Rates used by the Government to pay LBG for indirect costs incurred performing cost-plus contracts, (b) time and materials contracts billed and paid based on negotiated labor rates into which inflated Billing Rates were incorporated, and (c) fixed-price contracts that were billed and paid based on negotiated overall contract prices into which inflated Billing Rates were incorporated.

5. The systematic and ongoing nature of Defendants' fraudulent conduct insulated LBG's false Billing Rates from Government scrutiny and ensured that LBG's obligation to remit contract overpayments was not triggered by the Government's revision of a prevailing Billing Rate or establishment of a true, final overhead rate.

6. Defendants cannot dispute that they defrauded the United States in this manner. Both Defendants and a co-conspirator, Precy Pellettieri, have pleaded guilty to conspiring to defraud the Government with respect to claims for contract payments billed at intentionally inflated overhead rates.

7. As this fraudulent conduct came to light, Defendants resigned their positions at BG Holdings and LBG. Wolff received a severance package worth over $1 million and entered into agreements with BG Holdings for the repurchase of his interests

in the company. As of approximately April 2016, Wolff has received over $40 million from BG Holdings under those agreements. Pepe is scheduled to receive over $500,000 from BG Holdings for his interests in the company.

8. Because of Defendants' conduct, the United States paid LBG tens of millions of dollars to which it was not entitled under the terms of its Government contracts and applicable Federal statutes and regulations, and LBG concealed, avoided, or decreased its obligation to repay similar amounts due to the United States under the terms of its Government contracts and applicable Federal statutes and regulations.

9. Accordingly, Defendants are liable under the FCA for three times the amount of damages that the United States sustained because of their conduct plus civil penalties for each false claim.

I. THE PARTIES AND RELATED ENTITIES

A. Plaintiff United States of America

10. The plaintiff in this action is the United States. The Government agencies damaged by Defendants' conduct include USAID, the Army, and the Air Force.

11. USAID is an independent Government agency that receives overall foreign policy guidance from the Department of State. USAID strives to advance the United States' interests abroad by supporting economic growth, development of infrastructure, and disaster relief, among other objectives. USAID has offices, or "missions," in more than 80 countries, and it funded the rebuilding of Afghanistan and Iraq. USAID contracts with private companies for a variety of services to effectuate United States foreign policy objectives. USAID has contracted with LBG since the 1980s.

12. DCAA is part of the Department of Defense. It conducts contract audits for Department of Defense components, and often, for USAID.

B. Relator Harold Salomon

13. Under the FCA, a person, or "relator," may bring a civil action on behalf of the United States. 31 U.S.C. § 3730(b). The Government "may elect to intervene and proceed with the action," *id*., as it has done here, in which case the Government assumes "primary responsibility for prosecuting the action." *Id*. § 3730(c).

14. The relator in this action is Harold Salomon. Salomon is presently a resident of Tampa, Florida. He worked as an accountant and financial analyst from 1996 to 2015.

15. Salomon has direct, first-hand knowledge of Defendants' fraudulent conduct. From March 2002 to October 2005, Salomon worked at LBG corporate headquarters in East Orange, New Jersey. He prepared various financial reports used internally by LBG and externally by LBG's auditors, and reports submitted by LBG to Government agencies.

16. Salomon was responsible for preparing Incurred Cost Submissions and overhead rate statements/proposals submitted by LBG to the United States for FY 2002, FY 2003, FY 2004, and FY 2005. He prepared these statements based on directions given to him by Wolff, Pepe, and Pellettieri.

17. Until resigning from LBG on October 6, 2005, Salomon retrieved the data that was included in Incurred Cost Submissions from LBG's accounting and data systems, analyzed the data, prepared the spreadsheets that were used to create the actual reports, audited previous years' reports, including reports submitted for earlier Fiscal

Years through FY 2000, and answered auditors' questions concerning the data included in the reports.

18. Salomon resigned his position with LBG because of his objections to various improprieties that he observed in LBG's accounting practices and procedures.

19. On July 31, 2006, Salomon sued BG Holdings and LBG on behalf of the United States under the *qui tam* provisions of the FCA, 31 U.S.C. § 3730(b), and on July 10, 2009, he amended his complaint to add Wolff, Pepe, and Nicholas J. Masucci, President and Chief Executive Officer of LBG from 2002 to 2015.

20. The United States partially intervened in Salomon's *qui tam* action against Defendants on April 29, 2016.

C. Defendants Wolff and Pepe and Their Co-conspirators

21. On information and belief, Derish M. Wolff is presently a resident of Miami, Florida. He was President and Chief Executive Officer of LBG from 1982 to 2002 and Chairman of the Board of BG Holdings from 2002 to 2010. He started working for LBG entities in 1961, and he held the controlling share of BG Holdings stock until 2010.

22. Wolff was personally and directly involved in LBG's fraudulent conduct while President and Chief Executive Officer of LBG, and he remained personally and directly involved while Chairman of the Board of BG Holdings. Throughout this time, he directed Pepe, Pellettieri, and others to submit false Incurred Cost Submissions and inflated overhead rates to the Government, thereby increasing Billing Rates and corresponding Government payments related to international contracts funded by the United States.

23. On December 12, 2014, in the District of New Jersey, Wolff pleaded guilty to one count of conspiracy to defraud the United States with respect to claims in violation of 18 U.S.C. § 286. In connection with his plea, Wolff admitted that under his "oversight and supervision," Pepe and Pellettieri, "on a periodic basis by an accounting method known as a "journal entry,'" would "improperly reclassify the work hours of LBG employees at East Orange headquarters, unbeknownst to those LBG employees or despite their objections, by transferring their charged work hours from a corporate overhead account to a USAID-devoted overhead account, notwithstanding that those employees had not devoted those work hours to USAID, thereby raising the overhead-recovery rate."

24. On information and belief, Salvatore J. Pepe is presently a resident of Tuckahoe, New York. He was Controller of LBG from 2000 to 2006 and Chief Financial Officer of LBG from 2006 to 2009. Prior to 2000, Pepe worked for an LBG affiliate, Ammann and Whitney.

25. Pepe, like Wolff, was personally and directly involved in LBG's fraudulent conduct. Pepe developed the methods for implementing the falsifications ordered by Wolff.

26. On November 5, 2010, also in the District of New Jersey, Pepe pleaded guilty to one count of conspiracy to defraud the United States with respect to claims in violation of 18 U.S.C. § 286. In connection with his plea, Pepe admitted that between September 2001 and August 2007, he agreed with Wolff and others "to bill USAID and other federal agencies for LBG's indirect costs at falsely inflated [overhead] rates," to "target" a Government overhead rate of "above 140," and to make journal entries that

reclassified non-Government labor time of LBG corporate headquarters employees to Government accounting divisions.

27. Precy Pellettieri was General Accounting Manager and Assistant Controller of LBG from September 2000 to May 2006 and Controller of LBG from June 2006 to June 2009. She pleaded guilty to the same conduct as Pepe in the District of New Jersey on November 5, 2010.

28. Additional co-conspirators facilitated Defendants' fraudulent conduct but have not been charged.

D. Berger Group Holdings and the Louis Berger Group

29. BG Holdings is a privately-held Delaware corporation with its corporate headquarters in East Orange, New Jersey. BG Holdings owns or controls a broad array of construction, engineering, and environmental companies, which collectively operate as the Louis Berger Group.

30. LBG is a New Jersey corporation with its corporate headquarters in East Orange, New Jersey. LBG is a wholly owned subsidiary of BG Holdings. Founded in 1953, LBG has over 3,000 employees and operates more than 140 offices across the United States and throughout the world.

31. LBG is the primary subsidiary of BG Holdings responsible for construction, engineering, and environmental work performed outside of the United States. LBG does this work directly and through the use of subsidiaries and affiliates. The primary customers of LBG's international services are the United States and foreign governments. LBG also contracts with state governments and private entities.

II. JURISDICTION AND VENUE

32. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1331 and 31 U.S.C. § 3732(a), the latter of which specifically confers jurisdiction on this Court for actions brought under 31 U.S.C. § 3730.

33. This Court has personal jurisdiction over Defendants under 31 U.S.C. § 3732(a) because that section authorizes nationwide service of process, and Defendants have the requisite contacts with the United States.

34. Venue is proper in this District under 28 U.S.C. § 1391 and 31 U.S.C. § 3732(a) because Defendants transacted business in, or at least one of the acts proscribed by 31 U.S.C. § 3729 was committed in, this District.

III. BACKGROUND

35. Before September 11, 2001, the majority of LBG's Government contracts were for domestic projects within the United States. After September 11, LBG won several large contracts for international reconstruction work in Afghanistan and Iraq, among other countries, funded primarily by the United States, including the Afghanistan Rehabilitation of Economic Facilities and Services contract (**REFS**), No. 306-C-00-02-00500-00, which USAID awarded to LBG in the fall of 2002, and the Iraq Vocational Training and Employment Services contract (**VTES**), No. 267-C-00-04-00417-00, which USAID awarded to LBG in the fall of 2004. A more complete list of LBG's international Government contracts relevant to this Complaint is included as **Exhibit A**.

A. Types of Government Contracts

36. LBG's international contracts with the United States fall into one of three categories: cost-plus contracts, time and materials contracts, or fixed-price contracts. All three types of contracts provide for compensation of direct and indirect costs.

37. Compensation under a cost-plus contract is comprised of three primary components: reimbursement of direct costs, reimbursement of indirect costs according to an overhead rate, and payment of a fee.

38. As defined by the Federal Acquisition Regulation (**FAR**), Title 48 of the Code of Federal Regulations, "direct costs" are those directly attributable to a specific "cost objective," FAR § 2.101—a specific "function, organizational subdivision, contract or other work unit." FAR § 31.001. Direct costs may include the salary of laborers working on a project covered by a specific contract and the cost of materials needed for that project.

39. "Indirect costs" are those not directly attributable to a specific cost objective because they are incurred in support of two or more cost objectives, or in support of the operation of the business as a whole. FAR § 2.101. Indirect costs are sometimes sub-classified as "overhead costs" (for example, rent, utilities, and insurance); "general and administrative costs" (for example, the salary of corporate headquarters employees and costs related to that labor); and "fringe benefit" or "payroll additive costs" (for example, employee benefits, vacation pay, and retirement plan contributions). For simplicity, this Complaint will refer to these costs collectively as "indirect costs."

40. "Indirect cost rates"—referred to herein as "overhead rates"—are percentages that express "the ratio of indirect expense incurred in a given period to direct

labor cost, manufacturing cost, or another appropriate base for the same period." FAR § 2.101.

41. With cost-plus contracts, the Government relies on overhead rates reported by the contractor during contract negotiation to decide on ceiling prices and award fees, and during contract execution to calculate the amount of indirect costs payable by the Government. FAR § 42.703-1(b) (provisional Billing Rates and final overhead rates "shall be used in reimbursing indirect costs under cost-reimbursement contracts.")

42. Compensation under a time and materials contract is comprised of two primary components: payment for the costs of labor according to a negotiated labor rate, and payment for the costs of materials. Payment for indirect costs is embedded into the labor rate, which is negotiated based on the prevailing Billing Rate. *See id*.

43. Compensation under a fixed-price contract is comprised of one primary component: payment of a negotiated overall contract price. Payment for indirect costs is embedded into that overall price, which is negotiated based on the prevailing Billing Rate. *See id*. (provisional Billing Rates and final overhead rates "shall be used . . . in determining progress payments under fixed-price contracts.").

B. Rules Governing Government Contracts

44. All three types of Government contracts are governed by the FAR. Part 31 of the FAR includes rules for allocating costs to Government contracts. Depending on the type of contract at issue, these rules are supplemented by the Government's Cost Accounting Standards (**CAS**), Generally Accepted Accounting Principles (**GAAP**), and supplemental agency-specific rules. *See* FAR § 31.201-2.

45. Only "allowable" costs are chargeable to the Government. A cost is allowable if it is reasonable, allocable, and compliant with CAS and/or GAAP, the terms of the relevant Government contract(s), and limitations in Subpart 31.2 of the FAR. FAR §§ 31.201-2(a); 52.216-7.

46. A cost is allocable to a Government contract if it: (a) "is incurred specifically for the contract" (i.e., a direct cost), or (b) benefits "both the contract and other work, and can be distributed to them in reasonable proportion to the benefits received," or "is necessary to the overall operation of the business" (i.e., an indirect cost). FAR § 31.201-4.

47. Regarding direct costs, the FAR provides: "Direct costs of the contract shall be charged directly to the contract," and no "final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose in like circumstances have been included in any indirect cost pool to be allocated to that or any other final cost objective." FAR § 31.202(a). Direct costs that are allocated to Government contracts in derogation of these rules are not allowable.

48. Regarding indirect costs, the FAR provides that first, such costs should be collected into "cost groupings," and second, apportioned *pro rata* across the cost objectives that they benefit. *See* FAR § 31.203. Cost groupings—also known as "cost pools" or "cost centers"—must be "logical" and reflect "due consideration of the reasons for incurring such costs," and as with direct costs, no "final cost objective shall have allocated to it as an indirect cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included as a direct cost of that or any other final cost

objective." *Id*. Indirect costs that are allocated to Government contracts in derogation of these rules are not allowable.

49. For any given cost pool, an overhead rate may be calculated by dividing the total annual indirect costs collected in the cost pool (**Numerator**) by an "allocation base"—a unit of measure common to all contracts covered by one, or a set of, cost pools (**Denominator**). *See* FAR § 2.101. The function of the allocation base is to ensure the substantial matching of indirect costs with the benefits derived from those costs by a defined group of contracts. *See* FAR § 31.203(c). For example, if a division of a company incurs $140 in indirect costs, $100 in direct labor costs, and uses direct labor costs as its allocation base, the division's overhead rate would be 140 percent. For every $1 in direct labor costs incurred by the division, it would be entitled to an additional $1.40 to cover its indirect costs.

50. Under the FAR, a contracting organization may not gerrymander cost pools—combining unlike cost objectives or separating like ones—in order to manipulate an overhead rate. Nor may an organization allocate a portion of certain indirect costs directly to some projects, and the remainder more broadly to all projects, unless there is a legitimate, documented reason for doing so. *See* FAR §§ 31.202(a); 31.203(b); 48 C.F.R. § 9904.401.

51. Furthermore, once "an appropriate base for allocating indirect costs has been accepted" by the Government, "the contractor shall not fragment the base by removing individual elements." FAR § 31.203(d).

C. Certified Statements and Claims for Payment

52. To recover indirect costs under Government contracts, a contractor must submit annual, certified financial statements to the United States, and claims for payment generally comprised of detailed invoices and standard form Government payment vouchers. *See* FAR Subpart 42.7; FAR § 52.216-7.

53. Within six months of the close of each fiscal year, a contractor must submit an Incurred Cost Submission (**ICS**) for its Government division(s). Each ICS includes a statement of the actual direct and indirect costs incurred by the contractor during the preceding fiscal year and a statement/proposal of the "final" overhead rate for that fiscal year based on the contractor's "actual cost experience." *See id*. The contractor may also periodically submit proposals to establish provisional Billing Rates that govern Government payments to the contractor until final overhead rates are established. *See id*.

54. The contractor must certify that all costs included in its ICS and overhead rate calculation are in accordance with the FAR's cost principles. *See* 10 U.S.C. § 2324(h); 41 U.S.C. § 256(h); FAR §§ 42.703-2; 52.216-7(d); 52.242-4.

55. The Government uses these submissions both prospectively and retrospectively. Prospectively, the Government relies on ICSs and overhead rate statements/proposals when negotiating forward pricing agreements known as Negotiated Indirect Cost Rate Agreements (**NICRAs**) by USAID and Forward Pricing Rate Agreements (**FPRAs**) by Department of Defense components. NICRAs and FPRAs establish provisional Billing Rates, which the contractor and the United States use: (a) to calculate interim billings and payments under cost-plus contracts, (b) to negotiate labor

rates for time and materials contracts, and (c) to negotiate overall contract prices for fixed-price contracts. *See* FAR §§ 15.407-3; 42.704; 52.216-7(e); 742.770.

56. Retrospectively, the Government relies on ICSs and overhead rate statements/proposals to establish final overhead rates, which the Government applies when cost-plus contracts are closed out to reconcile interim billings and payments with final billings and payments. *See* FAR §§ 42.705; 52.216-7(h). If a final overhead rate is higher than the Billing Rate that was applied to calculate interim contract payments, the contractor may be entitled to additional payments from the Government. *Id*. If a final overhead rate is lower than the Billing Rate that was applied to calculate interim contract payments, the contractor is obligated to remit overpayments to the Government. *Id*.

D. LBG's Procedure for Allocating Indirect Costs to Government Contracts

57. Under the FAR, LBG is permitted to allocate indirect costs to Government contracts if: (a) the indirect costs were incurred exclusively in support of Government work, or (b) the indirect costs were incurred in support of the overall operation of LBG's business but allocated equitably to Government contracts through a Government-approved allocation procedure. For such company-wide indirect costs, LBG and the Government agreed to a procedure by which LBG would charge the Government.

58. First, LBG was required to collect such costs—which included the salaries of LBG's executive management, accounting, payroll, and other corporate headquarters personnel, and the costs of printing and reproduction, travel and lodging, office rent, insurance, and office supplies—into a single cost pool called "AA."

59. Second, LBG was required to allocate the AA costs to its two main divisions, "International" and "Domestic," in proportion to its Government-approved allocation base—direct labor plus short-term consultant costs.

60. Third, LBG was required to sub-allocate the AA costs in its International division to its cost centers: (1) "Government," comprised of "GG," for LBG's international contracts paid for by USAID involving direct labor of United States citizens, and after FY 2000, "GF," for LBG's international contracts paid for by USAID involving direct labor of foreign nationals; and (2) "Commercial International," for LBG's contracts paid for by foreign governments. LBG was required to allocate the AA costs in the International division to these cost centers according to its Government-approved allocation base.

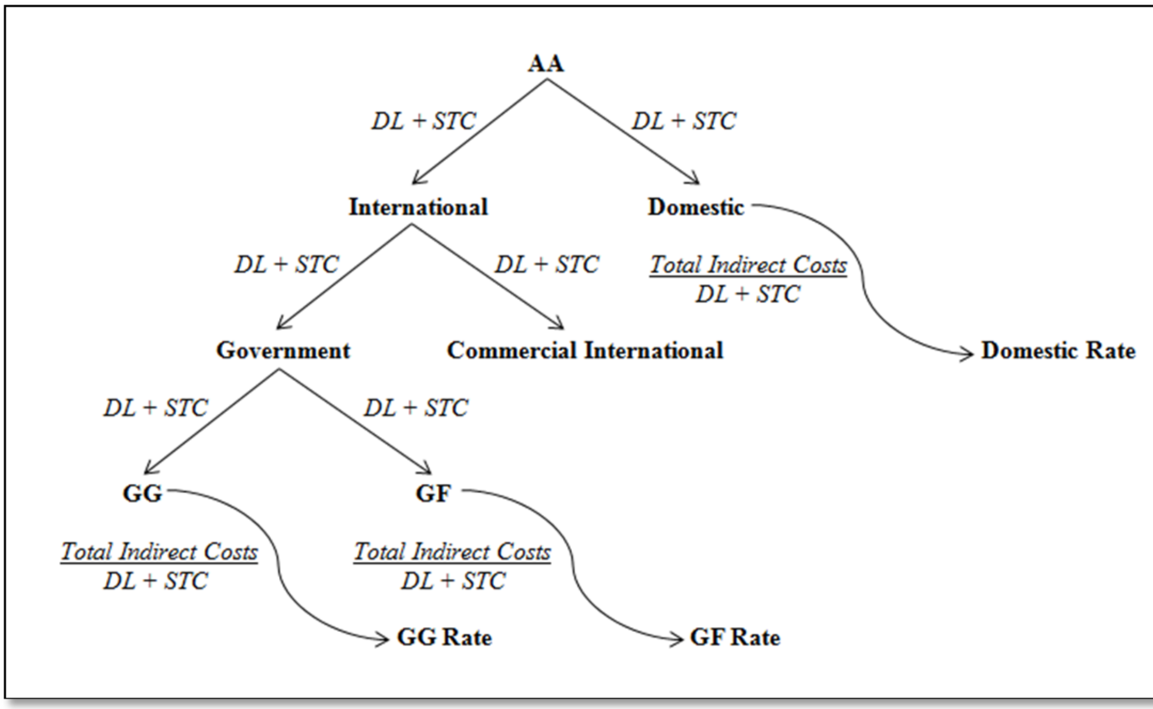
61. For the Domestic division and GG and GF cost centers, LBG calculated separate overhead rates and prepared separate ICSs and overhead rate statements/proposals.

62. To determine the overhead rate for the GG cost center (**GG Rate**), LBG first calculated the total amount of indirect costs in the GG cost center (i.e., the Numerator) by adding: (a) the indirect costs attributed to the GG cost center throughout the Fiscal Year to (b) the AA costs allocated to the GG cost center at the end of the Fiscal Year through the AA allocation procedure described above. LBG then divided that sum by the Government-approved allocation base (i.e., the Denominator).

63. LBG calculated the overhead rates for the Domestic division (**Domestic Rate**) and the GF cost center (**GF Rate**) in the same manner.

64. Unlike the GG Rate, however, the GF Rate was subject to a 40 percent cap imposed by USAID.

65. The diagram below illustrates the procedure that LBG was supposed to use to allocate company-wide indirect costs to its divisions and cost centers, and to calculate GG, GF, and Domestic overhead rates. (*DL* represents direct labor costs, and *STC* represents short-term consultant costs.)



E. LBG's Certified Statements and Claims for Payment

66. Each Fiscal Year, LBG submitted ICSs reporting direct and indirect costs, and overhead rates, for its Domestic division and GG and GF cost centers to the United States. LBG had its Domestic ICS independently audited before submission, but not its GG or GF ICS.

67. As required by Federal law, LBG certified annually that the costs included in its ICSs and overhead rate statements/proposals were allowable in accordance with

the FAR's cost principles. *See* 10 U.S.C. § 2324(h); 41 U.S.C. § 256(h); FAR §§ 42.703-2; 52.216-7; 52.242-4. Specifically, since at least 1999 and through approximately December 31, 2006, Pepe signed the following certification:

> This is to certify that I have reviewed this proposal to establish final indirect cost rates and to the best of my knowledge and belief:
>
> 1. All costs included in this proposal by LBG to establish billing or final indirect cost rates for Fiscal Year [XXXX] are allowable in accordance with cost principles of the Federal Acquisition Regulation (FAR) and its supplements applicable to the contracts to which the final indirect cost rates will apply; and
>
> 2. This proposal does not include any costs which are expressly unallowable under applicable cost principles of the FAR or its supplements.

68. In addition, with each invoice and voucher that LBG submitted to USAID, LBG certified:

> (i) the fiscal report and any attachments have been prepared from the books and records of the contractor in accordance with the terms of this contract, and to the best of my knowledge and belief, that they are correct, that the sum claimed under this Contract is proper and due, that all the costs of contract performance (except as herewith reported in writing) have been paid or will be paid currently by the Contractor when due in the ordinary course of business, that the work reflected by the costs above has been performed, that the quantities and amount involved are consistent with the requirements of this Contract, that all required Contracting Officer approvals have been obtained, and (ii) appropriate refund to USAID will be made promptly upon request in the event of disallowance of costs not reimbursable under the terms of this Contract.

69. The Government relied on the veracity of these certifications and LBG's ICSs and overhead rates in negotiating NICRAs, FRPAs, and the Billing Rates established therein, in making interim contract payments to LBG under cost-plus contracts, in refraining from revising Billing Rates or establishing final overhead rates,

and in negotiating labor rates for time and materials contracts and overall contract prices for fixed-price contracts.

70. On December 21, 1998, LBG and USAID entered into a NICRA that established a Billing Rate of 144.20 percent applicable to GG for the period beginning July 1, 1998, until amended. This 144.2 percent Billing Rate was the GG Rate proposed in LBG's FY 1998 ICS, and it prevailed from FY 1999 to FY 2001.

71. On June 23, 2003, LBG and USAID entered into a NICRA that established a Billing Rate of 143.51 percent applicable to GG for the period beginning July 1, 2001, until amended. This 143.51 percent Billing Rate was the GG Rate proposed in LBG's FY 2002 ICS, and it prevailed from FY 2002 to at least FY 2006.

72. The table below collects the GG Rates reported by LBG in its certified ICSs for FY 1998 to FY 2006, and the Billing Rates that governed interim contract payments during those Fiscal Years. The shaded cells illustrate that the Billing Rates were derived from the GG Rates reported by LBG in ICSs submitted for FY 1998 and FY 2002, respectively.

Fiscal Year	GG Rate Reported by LBG to Government in ICS	Billing Rate
1998	144.20 percent	143.10 percent
1999	146.60 percent	144.20 percent
2000	146.90 percent	144.20 percent
2001	144.98 percent	144.20 percent
2002	143.51 percent	143.51 percent
2003	147.04 percent	143.51 percent
2004	147.66 percent	143.51 percent
2005	140.79 percent	143.51 percent
2006	148.30 percent[2]	143.51 percent

[2] Although LBG contemporaneously calculated a GG Rate of 148.30 percent for FY 2006, it did not submit that rate, or a GG ICS, to the Government at that time.

73. All of these overhead rates were knowingly and falsely inflated by Defendants and their co-conspirators. Accordingly, every claim for payment under a Government contract that relied on these rates constituted a false claim. Similarly, every payment retained because of these rates that should have been remitted to the Government constituted a reverse false claim. Defendants caused LBG to make thousands of such claims between FY 2001 and FY 2006. A representative sample of such claims submitted by LBG to USAID under the Iraq VTES contract in FY 2005 and FY 2006 is included as **Exhibit B**.

IV. FALSE CLAIMS ACT VIOLATIONS

74. As amended on May 20, 2009 by the Fraud Enforcement and Recovery Act, Public Law 1111-21 (**FERA**), the False Claims Act provides:

> (a) LIABILITY FOR CERTAIN ACTS.—
>
> (1) IN GENERAL.—Subject to paragraph (2), any person who—
>
> (A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
>
> (B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
>
> (C) conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G); . . . or
>
> (G) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation or pay to transmit money or property to the Government,
>
> is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Public Law 104-410), plus 3 times the amount

of damages which the Government sustains because of the act of that person.

* * *

(b) DEFINITIONS.—For purposes of this section—

(1) the terms “knowing” and “knowingly”—

(A) mean that a person, with respect to information—

(i) has actual knowledge of the information;

(ii) acts in deliberate ignorance of the truth or falsity of the information; or

(iii) acts in reckless disregard of the truth or falsity of the information; and

(B) require no proof of specific intent to defraud . . . .

31 U.S.C. § 3729 (as amended May 20, 2009).

75. Prior to FERA, the False Claims Act provided:

(a) Any person who—

(1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval;

(2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government;

(3) conspires to defraud the Government by getting a false or fraudulent claim allowed or paid; . . . or

(7) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government,

is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, plus three

> times the amount of damages which the Government sustains because of the act of that person.
>
> * * *
>
> (b) KNOWING AND KNOWINGLY DEFINED.—For purposes of this section, the terms "knowing" and "knowingly" mean that a person, with respect to information—
>
> (1) has actual knowledge of the information;
>
> (2) acts in deliberate ignorance of the truth or falsity of the information; or
>
> (3) acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

31 U.S.C. § 3729 (as amended October 27, 1986).

76. Section 4(f) of FERA provides that the 2009 amendments to the FCA "shall take effect on the date of enactment of this Act and shall apply to conduct on or after the date of enactment, except that . . . subparagraph (B) of section 3729(a)(1) of title 31, United States Code, as added by subsection (a)(1), shall take effect as if enacted on June 7, 2008, and apply to all claims under the False Claims Act (31 U.S.C. 3729 *et seq*.) that are pending on or after that date."

77. FCA civil penalties were adjusted to $5,500 to $11,000 for violations occurring on or after September 29, 1999 by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461 (notes), and 64 Fed. Reg. 47099, 47103 (1999).

A. Defendants Submitted False Claims, and False Statements and Records Material to those Claims, to the United States.

78. To recover more indirect costs from the United States than permissible under the FAR, the terms of LBG's Government contracts, and LBG's Government-

approved cost allocation procedures, Defendants conspired to bill indirect costs to international Government contracts at falsely inflated overhead rates.

79. Regardless of LBG's "actual cost experience," Defendants targeted a GG Rate of above 140 percent. To ensure that they hit their target GG Rate each Fiscal Year, Defendants falsified ICSs, overhead rate statements/proposals, Billing Rate proposals, and related cost accounting data, which they certified and submitted to the Government.

80. Defendants conspired to inflate the GG Rate in at least two ways. First, they conspired to inflate the indirect costs in the Numerator of the overhead rate equation. Rather than first collecting certain company-wide indirect costs in LBG's AA cost pool and allocating those indirect costs to LBG's divisions and cost centers in proportion to the direct labor and short-term consultant costs in each division or cost center, Defendants and their co-conspirators allocated certain company-wide indirect costs directly to the GG cost center. Second, Defendants conspired to inflate the GG Rate by manipulating the costs included in the allocation base, or Denominator, of the overhead rate equation.

1. Defendants Conspired to Inflate the GG Rate by Charging Certain Company-wide Indirect Costs Directly to International Government Contracts.

81. Under the FAR, the terms of LBG's Government contracts, and LBG's Government-approved cost allocation procedures, LBG may directly allocate indirect costs to the GG cost center only if: (a) such costs were incurred specifically and exclusively in support of GG work, and (b) LBG has not indirectly allocated other such costs, incurred for the same purpose in like circumstances, to the GG cost center through

the AA allocation procedure. Defendants conspired to violate this requirement, including through their improper use of accounting codes GG997A and GG997B.

a. The East Orange Office Costs Scheme

82. GG997A was an accounting code created to capture costs incurred at LBG's East Orange corporate headquarters that specifically and exclusively benefitted LBG's international Government contracts.

83. The salaries of corporate headquarters employees, including executive management, accounting, and payroll personnel, and other costs of corporate headquarters labor, are quintessential indirect costs that benefit all of LBG's divisions and cost centers, not just international Government contracts. As such, these costs should have first been collected in the AA cost pool, and only then allocated to the divisions and cost centers, including GG, in proportion to the direct labor and short-term consultant costs in each division or cost center. Moreover, under no circumstance should time devoted to non-GG projects have been charged to GG997A. Defendants, however, conspired to use GG997A to charge the Government more than its fair share of corporate headquarters costs.

84. In one scheme, Defendants and Pellettieri, who worked at corporate headquarters, billed time to GG997A that they did not spend working exclusively on GG contracts, and they instructed their subordinates who also worked at corporate headquarters, including Salomon, the relator in this action, and other accounting and payroll personnel, to do the same.

85. In addition to improperly billing time to GG997A, Defendants and their co-conspirators reclassified time that had been properly billed to AA. Periodically, and

at the close of each Fiscal Year, Pepe and Pellettieri under the direction and supervision of Wolff used an accounting method known as a "journal entry" to reclassify—or "reclass" they called it—hours billed by corporate headquarters employees from AA to GG997A, even though the hours had not been devoted exclusively to GG work. This was routinely done without consulting employees' time sheets, and either absent employees' knowledge or consent, or over their objections.

86. Wolff admitted his involvement in the GG997A scheme between 2003 to 2006 in his guilty plea, and Pepe admitted his involvement in the scheme between September 2001 to August 2007 in his guilty plea. Defendants' fraudulent conduct, however, was more extensive. By way of example only:

a. Between FY 2001 and FY 2003 alone, Wolff charged hundreds of hours of his time directly to the Government via GG997A while charging most or all of the remainder of his time to AA. On one time sheet from this period, Wolff charged 52 hours (or over 30 percent) of his time to GG997A, and the remainder to AA accounting codes. The December 2001 time sheet, which Wolff signed, indicates that he worked most of the GG997A hours at LBG's corporate headquarters.

b. In June 2001, Wolff advised Pepe that LBG "should never let anyone set up an overhead without . . . having a target overhead rate."

c. In July 2003, Pellettieri, with whom Defendants admitted to conspiring, reported to Pepe various reclasses of costs to GG that she had performed. Pepe responded that Wolff's "original target" for the GG Rate "was 150%," and he instructed Pellettieri not to stop when she reached a certain threshold of reclasses.

d. In October 2003, Wolff asked Pepe and Pellettieri to "get together and set up a good strategy for how we are going to manage GG this year."

e. After the departure of Pellettieri's predecessor, Pepe increasingly encouraged Pellettieri to make efforts to increase the GG Rate—efforts Pellettieri admitted undertaking between 2001 to 2007. In 2003, Pepe specifically instructed Pellettieri to reclass time charged by corporate headquarters employees from AA to GG997A. Pellettieri executed Pepe's instruction in a series of end-of-FY 2004 journal entries. Malcolm McCloggan, LBG's Accounting Systems Manager, was among the corporate headquarters employees whose time was reclassed from AA to GG997A without his knowledge or approval. Through the end-of-FY 2004 journal entries, 78 hours of Mr. McCloggan's time (worth $3,640) were moved from AA to GG997A, even though Mr. McCloggan had not devoted those hours exclusively to Government work.

f. In February 2004, Wolff informed Pellettieri, in the presence of Salomon, that the GG Rate as of January 2004 was too low. Wolff responded, in substance and in part, that LBG should charge more indirect costs to GG. After this conversation, Pellettieri directed Salomon to charge his time directly to GG997A, even though Salomon worked at LBG corporate headquarters and his work did not exclusively benefit Government contracts.

g. Similarly, in a May 2004 email copied to Pepe, Pellettieri told two corporate headquarters employees, Tonya Alsobrook, LBG's Payroll Manager, and John Mullavelil, LBG's Assistant Payroll Manager, to charge a portion of their time directly to GG997A, and instructed that henceforth, both employees should be "assign[ed] . . . to GG997A."

h. In November 2004, Pellettieri, with whom Defendants admitted to conspiring, informed Defendants that the GG Rate was running at 148.74 percent, but absent a "measurable year end adjustment," the rate would be 143.15 percent. Pellettieri recommended that because of "the many assumptions used in developing the GG rate throughout the year and to preclude the prompt for closer scrutiny, and because the lesser rate is in line with our current NICRA," LBG report "a 143.15% proposed rate." Pepe initially accepted this recommendation, but he changed his mind a few weeks later, concluding that LBG should report the higher GG Rate "in anticipation of some downward adjustment to the rates when applying the full CAS compliance."

i. Also in November 2004, Defendants received a monthly overhead rate report from Pellettieri. The report indicated that the GG Rate through the first quarter of FY 2005 was well below Defendants' target of over 140 percent, but the GF Rate was well above the 40 percent cap imposed by USAID. Pepe reacted: "It appears more dollars are going to GF than needed. Should redirect to GG." In compliance with Pepe's instruction, Pellettieri, in post-closing Journal Entry No. 04JE1520, reclassed hundreds of FY 2004 costs from GF to GG, increasing LBG's GG Rate. Because Pellettieri was uncomfortable making this reclass, she had Pepe sign the journal entry.

87. In addition to reclassing salaries of corporate headquarters employees from AA to GG997A, Defendants conspired to reclass other indirect costs attendant to

headquarters labor, including payroll taxes, employee benefits, rent for office space, and other so-called "carrying costs."

88. Under the direction and supervision of Defendants, Pellettieri improperly reclassed by journal entry dozens of such costs from AA to GG997A, even though the costs had not been exclusively incurred in support of GG contracts. For example, in Journal Entry No. JE0506A21 dated December 2004, Pellettieri caused the reclass of thousands of dollars of "carrying costs" from AA to GG997A.

89. Pepe, with whom Wolff admitted to conspiring, acknowledged his involvement in this scheme as well, agreeing in his guilty plea that "[o]n a periodic basis . . . , Ms. Pellettieri, under [his] supervision, reclassif[ied] by journal entry, dozens of LBG's non-GG indirect costs, such as employee benefits, as GG costs, which caused the GG rate to increase."

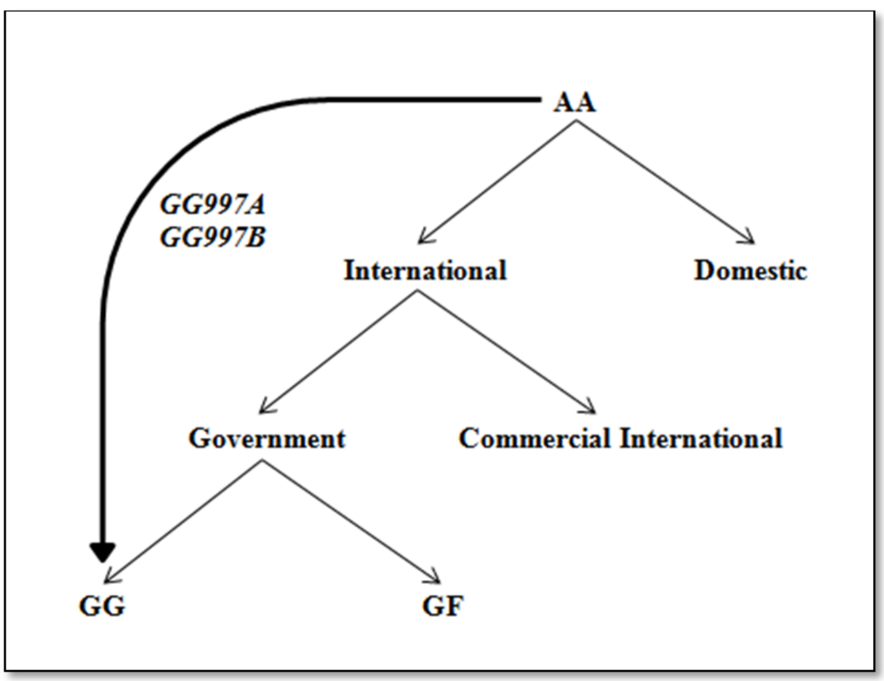
b. The D.C. Office Costs Scheme

90. In a similar scheme, on instructions from Wolff in or around 2001, Defendants and their co-conspirators implemented a policy by which common costs of LBG's Washington, D.C. office—including rent, telephone bills, and office supplies—were charged directly and disproportionally to GG contracts through accounting code GG997B.

91. Wolff's policy was improper because, although the D.C. office supported GG work, it also supported non-GG work, including both Domestic and Commercial International contracts paid for by state and foreign governments and private entities. Consequently, the policy resulted in the United States paying more than its fair share of D.C. office common costs.

92. Wolff's policy also put LBG's internal D.C. office cost reporting at odds with its external reporting to the Government. An internal report of D.C. office rent allocation, for example, indicated that as of March 2002, only 18 percent of the fifth floor, 58 percent of the ninth floor, 5 percent of the tenth floor, and 19 percent of the eleventh floor were occupied by employees working exclusively on Government projects. Nevertheless, per Wolff's policy, much greater shares of D.C. office expenses were allocated to Government contracts via GG997B. As Pepe explained the policy in a March 2007 memorandum, "historically management treated the Washington DC office as its USAID office and as such directly allocated the miscellaneous expenses of the office to USAID."

93. Like the GG997A scheme, the GG997B scheme falsely inflated LBG's GG Rates, Billing Rates, invoices and vouchers, and ultimately, LBG's recovery of indirect costs from the United States. The diagram below illustrates both schemes.



2. Defendants Conspired to Inflate the GG Rate by Improperly Manipulating the Allocation Base.

94. Under the FAR, a contractor must report its allocation base to the Government for approval. The allocation base must be "common to all cost objectives" to which a cost pool is to be allocated, and "[o]nce an appropriate base for allocating indirect costs has been accepted, the contractor shall not fragment the base by removing individual elements." FAR § 31.203(c), (d).

95. LBG may not, in other words, use one allocation base (for example, direct labor plus short-term consultant costs) to allocate AA costs to one division (for example, International), then use a different, fragmented allocation base (for example, direct labor costs) to allocate AA costs to another division (for example, Domestic).

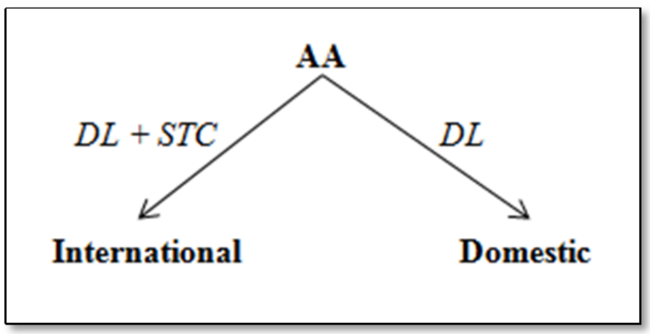
96. Nor may LBG use one allocation base (for example, direct labor plus short-term consultant costs) to sub-allocate AA costs to one cost center (for example, GG), then use a different, fragmented allocation base (for example, direct labor costs) to sub-allocate AA costs to another cost center (for example, Commercial International).

97. Nor may LBG use one allocation base (for example, direct labor plus short-term consultant costs) to sub-allocate AA costs to one cost center (for example, GG), then use a different, fragmented allocation base (for example, direct labor costs) to calculate the overhead rate for that cost center. Defendants conspired to break these rules.

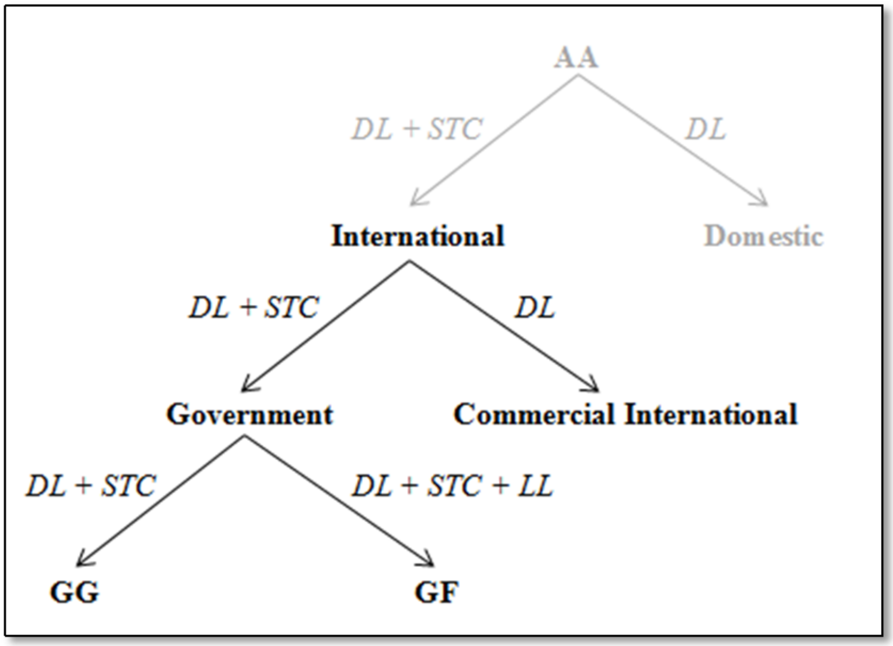
98. LBG purported to use direct labor plus short-term consultant costs as its allocation base throughout the period relevant to this Complaint. In late 2004, while preparing LBG's Domestic ICS, Salomon noticed that certain short-term consultant accounts were missing from the Domestic allocation base. Salomon informed Pepe of

the error and added the missing accounts to the allocation base. Pepe, however, ordered Salomon to remove the accounts.

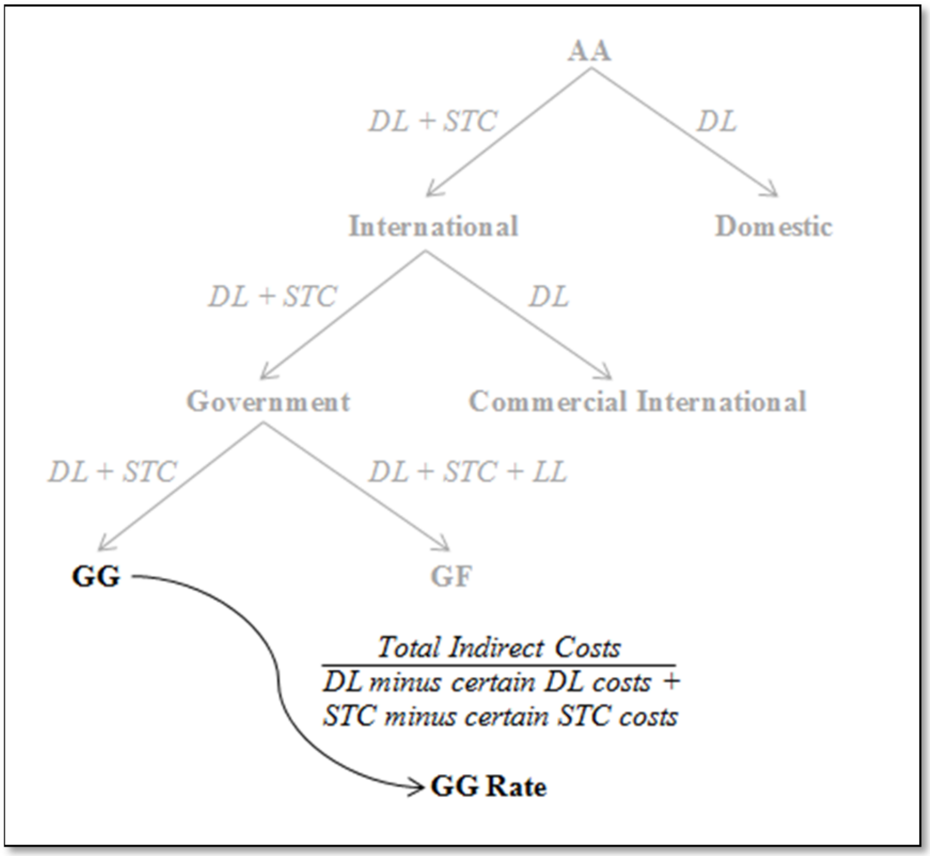
99. Because AA costs are allocated to LBG's Domestic and International divisions in proportion to the direct labor plus short-term consultant costs in each division, the effect of this manipulation was to decrease the Domestic division's share of the AA allocation, and to increase the International division's share of the AA allocation. The diagram below illustrates this fragmentation of the allocation base. (*DL* represents direct labor costs, and *STC* represents short-term consultant costs.)



100. Once Defendants caused AA costs to be disproportionately allocated to the International division in this manner, they caused those costs to be disproportionately sub-allocated to Government cost centers (GG and GF) by removing short-term consultant costs from the Commercial International allocation base, and by adding "direct local labor" costs—a general ledger category distinct from direct labor costs—to the GF allocation base. The diagram below illustrates these manipulations of the allocation base. (*LL* represents direct local labor costs.)



101. After fragmenting the allocation base to channel disproportionate AA costs to GG and GF—but before calculating the GG Rate—Defendants conspired to decrease the costs in the Denominator of the GG Rate equation, thereby increasing the resulting percentage. In furtherance of this manipulation, general ledger account number 501.500, titled "Labor Does Not Drive Overhead," was used to conceal certain direct labor costs, and general ledger account number 542.600, titled "Consultant Don't Drive OH," was used to conceal certain short-term consultant costs. The diagram below illustrates this manipulation of the Denominator.



102. Evidencing the extent of Defendants' ongoing efforts to "manage" the GG Rate, a March 2003 spreadsheet that Pepe prepared for Wolff evaluated 12 different GG Rate calculations, involving manipulations of both the Numerator and the Denominator of the GG Rate equation. The first four calculations assumed that no indirect costs were reclassed from AA to GG, the next four calculations assumed that certain indirect costs were reclassed, and the last four calculations assumed that still more indirect costs were reclassed. Then, within each set of reclasses, Pepe experimented with four different "AA allocation basis alternatives," including direct labor plus GF local labor, direct labor plus GG and GF local labor, direct labor plus short-term consultants plus GF local labor, and direct labor plus short-term consultants plus GG and GF local labor. The experiment yielded 12 different GG Rates ranging from 118.24 percent to 143.32 percent.

103. Upon sharing his analysis with Wolff in a March 2003 email, Pepe admitted, *inter alia*: (a) the third set of calculations, in which the most AA costs were reclassed from AA to GG, "may be a stretch to defend;" (b) the "most analytically correct" of the "AA allocation basis alternatives" was the second; and (c) he would "continue to identify other adjustments to achieve the desired level of 145% for GG." The GG Rate that Pepe ultimately certified and reported to the Government for FY 2002—143.51 percent—exceeded the highest rate derived in Pepe's experiment and became the prevailing Billing Rate.

104. The net result of Defendants' manipulations of LBG's allocation base was disproportionately to increase the share of AA costs allocated to Government contracts, and artificially to increase GG Rates.

B. The False Claims, Statements, and Records Defendants Caused LBG to Submit to the Government were Material to the Government's Payment of LBG's Billings.

105. The false statements that Defendants and their co-conspirators submitted or caused to be submitted to the Government were material to the Government's payment of LBG's falsely inflated invoices and vouchers.

106. LBG's ICSs, overhead rate statements/proposals, and Billing Rate proposals, were capable of influencing, and did influence, Government agency action—specifically, the Government's payment of LBG—throughout the period relevant to this Complaint.

107. First, these false statements induced the United States to agree to falsely inflated Billing Rates. On December 21, 1998, the Government agreed to a Billing Rate of 144.2 percent, applicable to the payment of LBG invoices and vouchers between FY

1999 and FY 2001. In the Fiscal Years surrounding the establishment of this Billing Rate, Defendants ensured that LBG submitted GG Rates to the Government in excess of 140 percent. Had USAID known that properly calculated, those rates would have been well below 140 percent, USAID would not have agreed to a Billing Rate of 144.2 percent.

108. Similarly, on June 23, 2003, the Government agreed to a Billing Rate of 143.51 percent, applicable to the payment of LBG invoices and vouchers between FY 2002 and FY 2006. In the Fiscal Years surrounding the establishment of this Billing Rate, Defendants ensured that LBG submitted GG Rates to the Government in excess of 140 percent. Had USAID known that properly calculated, those rates would have been well below 140 percent, USAID would not have agreed to a Billing Rate of 143.51 percent.

109. Second, Defendants' false statements insulated LBG's falsely inflated Billing Rates from Government scrutiny and perpetuated Defendants' frauds. By reporting GG Rates consistently over 140 percent after the 144.20 Billing Rate was established in December 1998, and again after the 143.51 Billing Rate was established in June 2003, Defendants ensured that the Government would not exercise its authority under the FAR to revise the prevailing Billing Rate. *See* FAR § 42.704(c) ("Once established, billing rates may be prospectively or retroactively revised by mutual agreement of the contracting officer (or cognizant Federal agency official) or auditor and the contractor at either party's request, to prevent substantial overpayment or underpayment. When agreement cannot be reached, the billing rates may be unilaterally determined by the contracting officer (or cognizant Federal agency official).").

110. Similarly, by consistently reporting GG Rates around the prevailing Billing Rate, Defendants ensured that the Government would not be motivated to revise the prevailing Billing Rate or finalize a GG Rate and thus trigger LBG's obligation to remit falsely inflated interim payments to the Government. *See* FAR §§ 42.705; 52.216-7(h). Indeed, USAID did not finalize a GG Rate during the period relevant to this Complaint, relying to its detriment on the falsely inflated Billing Rates that seemed reasonable in comparison to LBG's falsely inflated GG Rate statements/proposals for FY 2001 to FY 2005.

111. Because, as discussed, Billing Rates are germane to the Government's payment of LBG under all three types of Government contracts, any decrease in those rates would have affected nearly all of LBG's international Government business and resulted in the United States paying millions less for LBG's services.

C. Defendants Knew the Claims, Statements, and Records They Caused LBG to Submit to the Government were False and Material to the Government's Payment of LBG's Billings.

112. Defendants knew, were deliberately ignorant to, or acted in reckless disregard of, the veracity of the ICSs, overhead rate statements/proposals, Billing Rate proposals, cost accounting data, and invoices and vouchers that they submitted or caused to be submitted to the Government throughout the period relevant to this Complaint. Likewise, Defendants knew that these false claims, statements, and records were material to the Government's payment of LBG.

113. Defendants' knowledge is established by their guilty pleas and bolstered by numerous additional facts.

114. First, Defendants' direct involvement in the fraudulent conduct that resulted in the submission of false claims by LBG establishes Defendants' knowledge.

115. Second, even though LBG had only an annual obligation to calculate and submit overhead rates, Defendants ordered, received, and closely scrutinized overhead rate reports on a monthly basis to monitor and continually manage the GG Rate. Salomon was among the LBG employees responsible for preparing such reports. Often, after reviewing monthly overhead rate reports and at the end of financial reporting periods, Defendants ordered Salomon and others to reclass indirect costs, and to execute other fraudulent manipulations, to increase the GG Rate to the target level.

116. Third, LBG's ICSs, overhead rate statements/proposals, and issues related to GG997A, GG997B, and the GG allocation base, were routinely discussed during BG Holdings Operating Committee meetings, BG Holdings and LBG Board of Directors meetings, and other meetings of senior management that Defendants attended. As members of such committees and frequent attendees, Defendants were intimately familiar with the ongoing manipulations of the GG Rate, the effect of those manipulations on the veracity of LBG's statements to the Government, and the result of those false statements—LBG's continued receipt and retention of inflated indirect cost payments from the Government.

117. In 2001, for example, Pepe presented a GG Rate of below 140 at a meeting of BG Holdings managers. Wolff challenged the rate during the meeting and publicly disparaged Pepe for being a "GG assassin."

118. Around that time, the question whether LBG's Government contracts were subject to full or only partial CAS compliance became a frequent topic of

discussion among senior management. Until 2006, Wolff maintained on behalf of LBG that LBG's international Government contracts were subject to an exception to full CAS compliance as contracts performed outside the United States. Wolff took this position in part to avoid additional Government reporting requirements to which LBG would be subject if it had to become fully CAS complaint. In 2004, under pressure from USAID, LBG prepared a CAS disclosure report, but Wolff decided not to submit the report to Government auditors to insulate Defendants' manipulations of the GG Rate from scrutiny. As Wolff was warned in a memorandum distributed during the December 2004 Operating Committee meeting, submitting a CAS disclosure report would "obviously jeopardize our current overhead recovery strategy," would put LBG's GG997B practice "at risk," and would "be a red flag to DCAA," which could "result in a decrease in $960,000 for the GG rate calculation."

119. Subsequent memos, prepared with Pepe's assistance and presented to Wolff in advance of and during Operating Committee and Board of Directors meetings between 2005 and 2007, elaborated on the details of LBG's indirect cost accounting schemes.

120. A memo titled "Management Structure in a CAS Environment" prepared for a 2005 Operating Committee meeting put issues relating to LBG's ICSs and overhead rate submissions front and center. "Bluntly put," the memo concluded, "should we move into full CAS, LBG runs the risk of not recovering $4.9 million of its GG overhead," and the GG Rate would drop from 138.5 percent to 104.29 percent. A follow-up memo identified the "cause of this decline" as "disallowing the GG997 accounts."

121. Another memo titled "Overhead Recovery" prepared for a 2006 Operating Committee meeting recognized "the desired 140%" GG Rate that LBG "aimed for through the 1990's and the first six years of the 2000's" and acknowledged that LBG would likely have only "partial success" in "defending GG997A and GG997B." The memo proposed three options: (1) stick to the current (and improper) system for calculating the GG Rate, which produced a rate of 148.50 percent; (2) modify the current system by making adjustments to GG997B charges, which produced a rate of 139.75 percent; or (3) completely restructure the current method to conform fully to CAS standards, which produced a rate of 121.73 percent.

122. An advantage of the first option, the memo advised, is that the resulting rate "is consistent with previously submitted NICRA's," while a disadvantage is that "we believe we may have assumptions in labor charges and particularly in non labor charges that will be questioned by the auditors as charges in excess of what should be allocated to the US Government." An advantage of the second option, the memo opined, "is that it maintains credibility with our existing practice and demonstrates that a migration is underway," while a "disadvantage is that the migration may appear superficial."

123. At the 2006 Operating Committee Meeting for which the "Overhead Recovery" memo was prepared, Wolff and others decided to withdraw LBG's ICSs from FY 2002 forward so that the "GG997A and B cost centers can be revised." It was estimated at that time that the potential financial impact of LBG's "overhead recovery issue" was $18 million. Although LBG calculated a GG Rate for FY 2006, it did not submit an ICS or overhead rate statement/proposal to the Government because of this "issue."

124. A subsequent memo titled "Louis Berger Overhead Recovery Issues" prepared for a 2007 Board of Directors meeting elaborated on the earlier reports about LBG's GG Rate manipulations and provided a comprehensive overview of the schemes detailed in this Complaint.

125. Among the memo's findings: (a) "in the twenty year history of GG," it did not appear that LBG had made any effort "to develop systems to assure accurate reporting of GG charges so that alterations would be unnecessary;" (b) "senior management instituted a procedure of altering the time charges" or corporate headquarters personnel "after the fact without employees knowledge" in order to "maint[ain] . . . a 140% GG rate;" and (c) "GG997B charges were further examined and it was verified that no more than a third could be legitimately charged to GG." The memo concluded that according to Michael Jichlinski, LBG's Chief Operating Officer from 2000 to 2007: "Derish [Wolff] directed all GG charges."

126. Roughly two years later, Wolff asked that the 2007 memo be amended and drafted a series of proposed revisions at the top of which he wrote: "Our lawyers should prepare a write-up on our defense." The 2007 memo was never amended.

V. COUNTS

Count One

False Claims Act (Conspiracy)
31 U.S.C. § 3729(a)(3) (as amended October 27, 1986)

127. The United States realleges and incorporates by reference the allegations in Paragraphs 1–126.

128. This is a claim for treble damages and civil penalties under the False Claims Act, 31 U.S.C. §§ 3729–3733.

129. From at least July 1, 2000 through June 30, 2006, Defendants conspired with each other, Precy Pellettieri, and others to present or cause to be presented false or fraudulent claims for payment or approval to the United States for work performed by LBG pursuant to Government contracts in violation of 31 U.S.C. § 3729(a)(3) (as amended October 27, 1986), now codified at 31 U.S.C. § 3729(a)(1)(C) (as amended May 20, 2009). Each LBG invoice and voucher based on or incorporating a falsely inflated Billing Rate was a false or fraudulent claim. Defendants acted knowingly with regard to the falsity and materiality of these claims for payment.

130. By reason of Defendants' violations, the United States sustained damages in a substantial amount to be determined at trial.

Count Two

False Claims Act (False Claims)
31 U.S.C. § 3729(a)(1) (as amended October 27, 1986)

131. The United States realleges and incorporates by reference the allegations in Paragraphs 1–126.

132. This is a claim for treble damages and civil penalties under the False Claims Act, 31 U.S.C. §§ 3729–3733.

133. From at least July 1, 2000 through June 30, 2006, Defendants and their co-conspirators presented or caused to be presented false or fraudulent claims for payment or approval to the United States for work performed by LBG pursuant to Government contracts in violation of 31 U.S.C. § 3729(a)(1) (as amended October 27, 1986) now codified at 31 U.S.C. § 3729(a)(1)(A) (as amended May 20, 2009). Each LBG invoice and voucher based on or incorporating a falsely inflated Billing Rate was a false or

fraudulent claim. Defendants acted knowingly with regard to the falsity and materiality of these claims for payment.

134. By reason of Defendants' violations, the United States sustained damages in a substantial amount to be determined at trial.

Count Three

False Claims Act (False Statements)
31 U.S.C. § 3729(a)(2) (as amended October 27, 1986)
31 U.S.C. 3729(a)(1)(B) (as amended May 20, 2009)

135. United States realleges and incorporates by reference the allegations in Paragraphs 1–126.

136. This is a claim for treble damages and civil penalties under the False Claims Act, 31 U.S.C. §§ 3729–3733.

137. From at least July 1, 2000 through June 30, 2006, Defendants and their co-conspirators made, used, or caused to be made or used false records or statements material to false or fraudulent claims for work performed by LBG pursuant to Government contracts in violation of 31 U.S.C. § 3729(a)(2) (as amended October 27, 1986) and/or 31 U.S.C. § 3729(a)(1)(B) (as amended May 20, 2009).

138. The false records or statements included or appeared in Incurred Cost Submissions, overhead rate statements/proposals, Billing Rate proposals, NICRAs and FPRAs, cost accounting data, and invoices and vouchers that Defendants caused LBG to submit to the United States on a regular basis. These false records or statements were material to the Government's payment of LBG invoices and vouchers. Defendants acted knowingly with regard to the falsity and materiality of these false records or statements.

139. By reason of Defendants' violations, the United States has sustained damages in a substantial amount to be determined at trial.

<u>Count Four</u>

False Claims Act (Reverse False Claims)
31 U.S.C. § 3729(a)(7) (as amended October 27, 1986)

140. United States realleges and incorporates by reference the allegations in Paragraphs 1–126.

141. This is a claim for treble damages and civil penalties under the False Claims Act, 31 U.S.C. §§ 3729–3733.

142. From at least July 1, 2000 through June 30, 2006, Defendants and their co-conspirators made, used or caused to be made or used false records or statements to conceal, avoid, or decrease obligations to pay or transmit money to the United States in connection with work performed by LBG pursuant to Government contracts in violation of 31 U.S.C. § 3729(a)(7) (as amended October 27, 1986), now codified at 31 U.S.C. § 3729(a)(1)(G) (as amended May 20, 2009).

143. The false records or statements included or appeared in Incurred Cost Submissions, overhead rate statements/proposals, Billing Rate proposals, NICRAs and FPRAs, cost accounting data, and invoices and vouchers that Defendants caused LBG to submit to the United States on a regular basis. These false records or statements were material to LBG's retention of Government overpayments as they ensured that the Government would not trigger LBG's obligation to remit overpayments to the United States by revising Billing Rates or finalizing overhead rates. Defendants acted knowingly with regard to the falsity and materiality of these false records or statements.

144. By reason of Defendants' violations, the United States has sustained damages in a substantial amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, the United States prays for judgment against Derish M. Wolff and Salvatore J. Pepe, jointly and severally, in an amount equal to three times the amount of damages the United States sustained because of Defendants' FCA violations, plus the maximum civil penalty of $11,000 per violation, as well as costs and all other appropriate relief.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, the United States demands a jury trial in this case.

Dated: July 28, 2016

Respectfully Submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

ROD J. ROSENSTEIN
United States Attorney

By: /s/ Tarra DeShields

Tarra DeShields (Bar No. 07749)
Assistant United States Attorney
Office of the United States Attorney
36 South Charles Street, Fourth Floor
Baltimore, MD 21201
Telephone: (410) 209–4800

Michael D. Granston
Michal Tingle
Russell B. Kinner
Adam R. Tarosky

United States Department of Justice
Civil Division
Post Office Box 261
Ben Franklin Station
Washington, DC 20044
Telephone: (202) 307–0404

Counsel for the United States